

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suede G. Kelly.

SG Resources Mississippi, L.L.C.

Docket No. CP02-229-001

ORDER GRANTING WAIVER OF CONDITION

(Issued July 13, 2004)

1. On May 14, 2004, SG Resources Mississippi, L.L.C. (SGRM) filed a petition, pursuant to sections 7(c) and 16 of the Natural Gas Act (NGA) and Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,<sup>1</sup> for waiver of a condition of the October 10, 2002 Commission Order authorizing construction and operation of the Southern Pines Energy Center.<sup>2</sup> SGRM seeks waiver of the condition that requires SGRM to execute a firm service agreement with Aquila Merchant Services (Aquila), Inc. For the reasons discussed below, the requested waiver is granted.

**Background**

**The October 10, 2002 Order and Condition**

2. The Southern Pines Energy Center is a new high performance underground natural gas storage project to be constructed in Greene County, Mississippi. The Southern Pines Project was certificated by the Commission in the October 10, 2002 order.<sup>3</sup> SGRM was granted certificate authorization to provide firm and interruptible storage services on an open-access basis pursuant to Part 284, Subpart G, of the Commission's regulations, at market-based rates and to undertake certain facility construction, operation and abandonment under Part 157, Subpart F.

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<sup>1</sup>18 C.F.R. § 385.207(a)(5)(2003).

<sup>2</sup>SG Resources Mississippi, L.L.C., 101 FERC ¶ 61,029 (2002).

<sup>3</sup>101 FERC ¶61,029 (2002).

3. Ordering Paragraph (G)(8) of the October 10, 2002 Commission Order authorizing construction and operation of the Southern Pines Energy Center requires that “[p]rior to commencing construction, SGRM and Aquila shall execute a service agreement for the level and term of service represented in the precedent agreement [for firm storage service of 3 Bcf of working gas capacity with a primary term of 10 years as SGRM described in its certificate application].”<sup>4</sup>

4. By letter to the Commission filed May 30, 2003,<sup>5</sup> SGRM notified the Commission that its original “anchor tenant,” Aquila Merchant Services, encountered substantial financial and credit difficulties, discontinued its energy marketing businesses, and was unable to execute a service agreement committing it to 3 Bcf (or any other quantity) of service.<sup>6</sup>

### **The Facility**

5. Southern Pines Energy Center is an at-risk storage project authorized to charge market-based rates. No substantial environmental or landowner impacts were found relating to this project.

6. When the Southern Pines Energy Center is completed it will offer approximately 12.0 Bcf of working gas storage capacity in two salt caverns, with 1.2 Bcf per day of maximum delivery and injection capabilities of up to 0.6 Bcf per day.

7. SGRM states that it continues to pursue development of the Southern Pines project and that it fully intends to construct it. SGRM asserts that “[i]f it were free to act on its own view of the natural gas markets, SGRM would commence construction of the Southern Pines Energy Center even before it concludes any service agreements.”<sup>7</sup>

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<sup>4</sup>101 FERC ¶ 61,029 (2002), Ordering Paragraph (G)(8).

<sup>5</sup>Letter from James F. Bowe, Jr. to Magalie R. Salas, Secretary of the Commission, on Current Status of Southern Pines Energy Center Project (as of May 30, 2003).

<sup>6</sup>Petition at p. 6.

<sup>7</sup>Petition at p. 5.

### Agreements

8. SGRM states that it has executed interconnect agreements with four interstate pipelines<sup>8</sup> and that it has received acceptable bids covering the initial phases of project construction, and continues to negotiate the terms of construction and materials procurement contracts. Additionally, SGRM avers that it has not executed any agreements for the services to be provided by the Southern Pines Energy Project.<sup>9</sup> SGRM contends that uncertainty as to the roles gas and electric utilities are expected to play in assuring the adequacy of gas supply and activity focused on the addition of liquefied natural gas import capability are factors contributing to the absence of progress of projects such as the Southern Pines Energy Center.

9. In its petition SGRM avers that recent negotiations with potential storage service customers may result in storage service agreements for a substantial portion of the Southern Pines Energy Center's capacity and that it believes that there is and will be substantial demand for new, high performance, natural gas storage capacity sited at strategic locations in the Gulf Coast production area.<sup>10</sup> SGRM asserts that "[g]iven its recent discussions with prospective customers, SGRM is confident that once it is able to commence construction and therefore able to provide a reliable in-service date to the market, creditworthy customers will execute service agreements for Southern Pines capacity. SGRM is not, however, currently free to proceed with project construction, because it cannot satisfy the 3 Bcf Condition."<sup>11</sup>

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<sup>8</sup>Destin Pipeline Company, L.L.C., Florida Gas Transmission Company, Gulfstream Natural Gas Company, L.L.C., and Transcontinental Gas Pipe Line Corporation.

<sup>9</sup>Further, SGRM contends that its difficulties in concluding storage service agreements in large part arise from the collapse of many of the leading wholesale energy trading businesses and the wave of credit rating downgrades that has swept the energy sector. SGRM also cites slowness by the energy industry in evaluating long-term gas transportation and storage service agreements and reluctance to make firm commitments to new projects (for fear of the potential impact of such commitments on their balance sheets and credit ratings).

<sup>10</sup>Additionally, SGRM states that it has had preliminary discussions with sponsors of several announced and to-be-announced LNG terminal projects, including some that would be located in or offshore of Alabama, Mississippi, and Louisiana and that would feed pipelines that will interconnect with the Southern Pines Energy Center.

<sup>11</sup>Petition, at p. 6.

### **SGRM's Request for Waiver of the Condition**

10. SGRM contends that the requirement to execute a service agreement for 3 Bcf is contributing to the difficulty it continues to have in concluding acceptable firm storage agreements and in moving forward with project construction. It is asserted that “[b]ecause [SGRM] is prepared to proceed with the commencement of construction now, even without executed long-term storage service commitments, and because it does not wish to be held hostage in its development activities to current (temporary) market conditions, SGRM [now] asks that the Commission act promptly to waive the 3 Bcf Condition.”<sup>12</sup>

11. SGRM states that the condition is unnecessary given the “at risk” nature of the project, its benign impact on the environment and landowners, and Commission policy. SGRM further states the condition is inconsistent with conditions attached to certificate approvals granted to at least one competitor storage project proposed for the same market.<sup>13</sup> Additionally, SGRM argues that the condition cannot be met as written “given the demise of the Aquila entity that originally was to have executed the agreement the 3 Bcf Condition references.”<sup>14</sup>

### **Discussion**

12. In the instant case, the storage project is a new entrant to the market and imposes no significant burdens on the environment or affected landowners. Thus, the project could be approved without an additional showing of need.<sup>15</sup> Pursuant to the Commission’s certificate Policy Statement, there was no requirement that SGRM offer

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<sup>12</sup>Petition at p. 7.

<sup>13</sup>Petition, particularly at p. 10. See: Copiah County Storage Company, 99 FERC ¶ 61,316, 52,346 (2002).

<sup>14</sup>Petition at p. 7.

<sup>15</sup>See: 101 FERC ¶ 61,029, 61,018 (“SGRM is a new entrant into the natural gas storage market and has no existing customers. Therefore, there would be no subsidization by existing customers and no existing customers adversely impacted by the proposal. Moreover, under SGRM’s market-based proposal, SGRM assumes the economic risks associated with the costs of the project’s facilities to the extent that any capacity is unsubscribed. Accordingly, the Commission finds that SGRM has satisfied the threshold no-subsidy requirement of the Certificate Policy Statement.”).

proof of specific contractual commitments for service from the Southern Pines Energy Center.<sup>16</sup>

13. In support of its application, SGRM submitted evidence of a precedent agreement for 3 Bcf of capacity for a ten-year contract term. Such evidence was not required under existing policy, however, and the Commission could have issued a certificate for the Southern Pines project without the condition for which a waiver has now been requested. Indeed, the Commission has issued certificates without requiring precedent agreements or executed contracts. For example, on June 13, 2002, the Commission issued its order approving Copiah County Storage Company's application for a certificate to construct a 3.3 Bcf salt cavern storage facility in Copiah County, Mississippi without a condition requiring contract execution.<sup>17</sup> Further, the requirement that SGRM and Aquila execute a service agreement for the level and term of service represented in the precedent agreement is now impossible to meet because Aquila Merchant Services is no longer operational.<sup>18</sup>

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<sup>16</sup>The Commission's Certificate Policy Statement in part states that the Commission "no longer require[s] an applicant to present contracts for any specific percentage of new capacity." Certification of New Interstate Natural Gas Pipeline Facilities, Statement of Policy, 88 FERC ¶ 61,227, 61,748 (1999). See also Order on Clarification, 90 FERC ¶ 61,128 (2000), Order on Clarification, 92 FERC ¶ 61,094 (2000).

<sup>17</sup>Copiah County Storage Company, 99 FERC ¶ 61,316 (2002). ("Copiah has not submitted executed contracts for the proposed storage services. However, Copiah states that due to its analysis of current and expected growth in demand for storage and hub services in the Gulf Coast region, it anticipates that the Copiah Storage Project will become subscribed as capacity becomes available for service. Copiah states that the interest of the market in these services is reflected in the results of the Copiah open season during which Copiah received non-binding nominations from five potential customers for a total of approximately 6.5 Bcf of natural gas storage. Copiah claims that the potential customers indicated an interest in signing contracts with an initial contract term of five to ten years at the time that the Copiah facilities are close to being placed into service.").

<sup>18</sup>See Aquila Merchant Services, Inc., 100 FERC ¶ 62,192 (2002) (Office Director Order) ([Aquila Merchant Services'] parent, Aquila, Inc., exited the wholesale energy and marketing business operated by Aquila Merchant on September 1, 2002); Aquila Merchant Services, Inc., 103 FERC ¶ 62,014 at 64,025, n.3 (2003) (Office Director's Order) ("Aquila Merchant Services recently restructured its operations and is currently engaged in terminating its merchant gas and power marketing business.").

14. No environmental impact would be involved with the approval of this petition.

15. For the foregoing reasons, we find that the requirement set forth in Ordering Paragraph (G)(8) of the October 10, 2002 Commission Order authorizing construction and operation of the Southern Pines Energy Center is not necessary to protect the public interest. Accordingly, for good cause shown, we grant the requested waiver. SGRM may not commence construction until it has satisfied all other applicable certificate conditions and Commission regulations.

16. At a hearing held on July 7, 2004, the Commission on its own motion, received and made a part of the record all evidence, including the applications and exhibits thereto, as amended and supplemented, submitted in this proceeding and upon consideration of the record,

The Commission orders:

Waiver of Ordering Paragraph (G)(8) of the October 10, 2002 Commission Order [101 FERC ¶ 61,029 (2002)] authorizing construction and operation of the Southern Pines Energy Center, requiring that “[p]rior to commencing construction, SGRM and Aquila shall execute a service agreement for the level and term of service represented in the precedent agreement is granted. Except for the waiver of Ordering Paragraph (G)(8), the October 10, 2002 Order remains unchanged.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.